19'42 **K** **File No.** O.-Post-offices/42

Legal **DEPARTMENT**

K **A BRANCH**

Subject:—

Opinions under the

Indian Post Office Act;

1898

D-9

File No. O- Post- office/42

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V.V.
30/4/1956.

Stre 30/4 DPP 3.4.56

Submitted.

2. Please see R.D. Office note at p. 19 ante. R.D. proposes to sanction the necessary expenditure for issuing a Railway pass to an excise constable for carrying local letters of the Superintendent of Excise Bombay, from Churchgate Station to all subordinate excise offices upto Dadar and vice versa. The Postmaster General, Bombay to whom the point was referred is of the opinion that this arrangement contravenes the provisions of the Indian Post Office Act, 1898 (p.17ante). R.D. is doubtful of this view and considers that the arrangement would be legal in view of the exemption contained in section 4(1)(b) of the said Act. The R.L.A. is requested to advise in the matter.

3. Sub-section (1) of section 4 of the Indian Post Office Act, 1898 provides inter alia that wherever within the British India posts or postal communications are established by the Central Government, the Central Government shall have the exclusive privilege of conveying by post, from one place to another, all letters except in the three exceptions mentioned thereunder etc. Clause (b) of the exceptions exempts letter solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose from the operation of the provisions contained in section 4(1) of the Act. The proviso to sub-section (1) says that nothing in the section shall authorise any person to make a collection of letters, excepted as aforesaid for the purpose of sending them otherwise than by post. The letters etc. which the

Excise constable of the Supdt. of Excise, Bombay will carry to the subordinate offices upto Dadar will solely consist of post belonging to his office or his subordinate offices and will therefore be covered by section 4(1)(b) .Moreover it is in the nature of the local hand delivery of letters from one office to another (cf. P.L.A.'s opinion No.2180,dated 28-8-1925). The arrangement proposed by R.D. does notcontravene any of theprovisions of theAct. The view taken by R.D. ,at p.19 ante, appears to be correct. The papers may be seen and returned.

P.S.Nadkarni
14/3

A.S.

Pl. put up Gazette of India , 1897 Pt.V ,P.385,1898 Pt.V p.211; 1897 Pt. VI p.249; 1898 Pt.VI pp 25,99,285 to 289

Sd/-
16/3

Mr. Nadkarni.

Submitted with the Gazette. The S.O.R. to procuding the Report of the S.C. do not throw any light on the point.

Sd/- P.S.N.
18/3

V.VK.
28/4/56.

Office of the R.L.A.

The question raised by R.D. appears to be covered by the R.L.A.'s opinion No. 2180, dated 20th August 1925 and the view aken by R.D. at p. 19 ante appears to be correct. The Post master General has not referred to any particular provision in the Indian Post Office Act, 1898, for holding that thearrangement is not permissible under that Act. His attention may be invited to the exception referred to in section 4(1)(b) and he may be requested to reconsider the view already expressed by him or to state in amplification of his reply at page 17 ante the specificxx provisions of theAct relied on by him in x support of that view so that if necessary the question could be considered further.

Sd/-P.N.H.
O.C. 8/4

Remembrancer of Legal Affairs.

U.R. to R.D. , No. 3068 , dated the 9th April 1942.

V.VK.
28/4/1956.

Legal Department.

R.I.No.4524/ 18/5/1942
25/5/1942

Submitted.

2. Please see U.O. to R.D. No. 3068 dated 9th April 1942. The P.M.G. was accordingly requested by R.D. to reconsider his view and to state the specific provisions of the Act relied upon by him. The P.M.G. in reply to this letter invites attention to the letter from the Government of India, Department of Industries and Labour No. 637-IM/32/Tl, dated the7th February 1935, and particularly to thethird sentence of para. 5 of theletter from the Govt. of India in the Posts and Tel. Deptt. No. PTI. 1-131/40, dated 20-1-1941. It appears from these communications that the Govt, of India is of theopinion that there is no objection to the sending of letters by private or official messengers within the same station. Their objection is to the establishment of a regular dak which involves at one end the collection of communications from different places prior to their despatch or at the other end, the distribution of communications to different addresses or both.

3. The R.L.A. in his U.R. to R.D. No.3068 dated the 9th April 1942, had not expressed any definite opinion on the question raised by R.D. at page 19 ante, and he had agreed to reconsider the question, if necessary, on receipt of a reply from the P.M.G. It is true that clause (b) of the exceptions to section 4(1) of the Indian Post Offices Act,1898, exempts letters solely concerning

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the affairs of the sender or receiver thereof, sent by a messenger on purpose from the operation of the provisions contained in section 4(1) of the Act. But the proviso to sub-section(1) says that nothing in the section shall authorise any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post. It appears therefore that although under clause (b) it would not be illegal to send letters solely concerning the affairs of the sender or receiver, the proviso to section 4(1) definitely limits the scope of clause (b) as it prevents any collection of letters coming within that exception for any purpose other than that of sending them by post (cf. also section 58(1)(a)). Although the arrangement for carrying letters by a messenger from the office of the Superintendent of Excise at the Church-Gate Station to all Sub-offices upto Dadar will be covered by clause (b) of sec. 4(1) of the Act, the collection of letters by him in the sub-offices and their distribution on his way back to his head office appears to have been prohibited by the proviso to section 4(1). It appears therefore that the arrangment proposed by R.D. at page 17 ante, would contravene the provisions of section 4(1) of the Act. Please see in this connection the extracts from the letter of the Government of Bengal and the reply of the Govt. of India thereto in the accompaniments to G.R.R.D.No., 2799/33, dated 1st September 1936(pp. 79-80 of R.D.File 2799/33). where a smilar question was

V.VK2 28/4/56.

Office of the R.L.A.

The view taken by the Government of India in their revised memorandum appended to their letter in the Indian Posts & Telegraphs Department No. P.T.I. 1-131/40 dated the 20th January 1940 and printed as an accompaniment to the Government of Bombay (Political and Services Department) Resolution No.1908/34, dated 4th April 1941 appears to be correct. Although letters solely concerning the affairs of the sender or receiver thereof sent by a messenger on purpose are excluded from the provisions of sub-section (1) of section 4 of the Indian Post Office Act, 1898, still the proviso thereto definitely prohibits the collection of such letters for the purpose of sending them otherwise than by post. Consequently employment of a special constable to convey the letters of the Superintendent of Excise from Churchgate to the other local stations such as Dadar would be lawful; but his employment for collecting letters from those stations for the Superintendent of Excise and others would not be permissible under the proviso to sub-section (1) of section 4. That is a view which the Government of India is evidently determined to maintain and it may be accepted and the arrangement discontinued.

Sd/-P.N.M.
O.C. 19/6
Remembrancer of Legal Affairs.

U.R. to R.D. No. 5053 ; dated the 20th June 1942.

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SWL 30/4